

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Amendment of Part 22 of the )  
Commission's Rules to Delete )  
Section 22.119 and Permit the )  
Concurrent Use of Transmitters in )  
Common Carrier and Non-Common )  
Carrier Services )

TO: The Commission )

CC Docket No. 94-46  
RM-8367

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COMMENTS OF THE  
ASSOCIATION FOR PRIVATE CARRIER PAGING SECTION OF  
THE NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

The Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP") by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R., Section 1.415 respectfully submits comments on the Commission's Notice of Proposed Rule Making ("Notice") in this proceeding.

The Association for

Private Carrier Paging Section of NABER

In 1989, NABER established the Association for Private Carrier Paging ("APCP"). Since that time, the Association has grown to include in its membership over two hundred (200) paging companies. This group has been actively involved in a variety of Commission proceedings including the filing of a petition for rule making which was the basis for the Commission's recent Report and Order in PR Docket 93-35 pertaining to amendment of the Commission's

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rules to provide channel exclusivity to qualified private paging systems at 929-930 MHz.<sup>1</sup>

APCP is comprised of local, regional and national private carrier paging licensees who operate on the paging only frequencies in the 150 MHz, 460 MHz and 900 MHz bands. A significant number of APCP members are also paging licensees under Part 22 of the Commission's Rules.

#### COMMENTS

The Commission has proposed in this proceeding to amend Section 22.119 of the Commission's Rules which prohibits the concurrent licensing and use of a transmitter to provide common carrier services under Part 22 of the Rules for non-common carrier communication purposes. The Commission's proposal is to delete Section 22.119 from the Rules and to permit the joint licensing and use of transmitters in the common carrier and private carrier services. In addition, the Commission in the same proceeding proposes to grant the interim rule waivers of Paging Network, Inc. ("PageNet"), PacTel Paging ("PacTel"), Arch Communications Group, Inc. ("Arch"), Metrocall, Inc. ("Metrocall"), American Paging, Inc. ("API"), Mid-Atlantic Paging Company, Inc. ("Mid-Atlantic") and Mobile Media Communications, Inc. ("Mobile Media") to allow joint use of their transmitters during the pendency of the rule-making.

APCP supports the Commission's decision to delete Section 22.119 of the Rules and to remove the current prohibition on the

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<sup>1</sup> In the matter of Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-30.

concurrent licensing and use of transmitters for common carrier and non-common carrier purposes. It is clear that the vibrant development of both the Private Carrier Paging and Common Carrier Paging industries and the presence of a number of well financed competitors operating on a local, regional and national basis have removed any further justification need for the prohibition set forth in Section 22.119 of the Rules. Further, the existence of strong and vibrant competition amongst providers in the market place removes the need for the Commission to be concerned that somehow users and consumers would be adversely impacted by deletion of the Rule. NABER does not support removal of the rule on a limited basis as discussed in Paragraph 7 of the Notice. NABER believes that in a competitive environment, the ability of carriers to determine their specific market needs and that of their customers should govern the configuration and utilization of equipment choices and their implementation. More importantly, as the equipment market has evolved to a point at which multi-frequency transmitters are now readily available, the Commission should not impose unnecessary economic burdens on carriers. To the extent the underlying purpose of the rule was to make certain that there was sufficient capacity offered to the public made available on common carrier frequencies, such a rationale can no longer be supported under current technological and market developments now present in the paging industry. Until such time as the Commission can find substantial evidence that the market place and/or customers or consumers are not being adequately served by

competitive offerings, NABER's position is that Section 22.119 of the Rules represents the type of regulation which the Commission under its current regulatory frame work should no longer find applicable and delete from its Rules.

NABER also supports the grant of the interim waivers by the Commission for PageNet, API, PacTel, Arch, Metrocall, Mid-Atlantic and Mobile Media. Further, NABER would recommend to the Commission that until final adoption of the Rule, it also expedite the processing and grant of any additional waivers requested by any other private carrier paging and/or common carrier licensee who wishes to apply for a similar interim waiver until completion of the rule-making.

#### **CONCLUSION**

**WHEREFORE**, the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission amend its Rules to delete Section 22.119 and that it act in a manner consistent with the Comments set forth hereinabove.

Respectfully submitted,  
**ASSOCIATION FOR PRIVATE CARRIER  
PAGING**

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Date: July 11, 1994